

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JAMES CARL KELLY,

Plaintiff,

v.

NEWSOM, et al.,

Defendants.

No. 2:23-CV-2581-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel, ECF No. 3.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances to request counsel. Plaintiff's motion requests an attorney because Plaintiff is not
10 cannot afford counsel, his imprisonment will limit his ability to litigate, and an attorney would be
11 better positioned to litigate the case. ECF No. 3 at 1. Although the case is not simple, it does not
12 raise any extraordinary complexities. See ECF No. 1. Plaintiff demonstrated sufficient ability to
13 articulate claims through writing a coherent complaint. See id. At the current stage of the
14 proceedings before any discovery or dispositive motions, Plaintiff has not shown any particular
15 likelihood of success on the merits. Consequently, Plaintiff has failed to demonstrate the
16 existence of exceptional circumstances.

17 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the
18 appointment of counsel, ECF No. 3, is DENIED.

19 Dated: December 13, 2023



20 DENNIS M. COTA
21 UNITED STATES MAGISTRATE JUDGE
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